

**Before the
Federal Communications Commission
Washington, D.C. 20554**

| | | |
|---|---|-------------------------|
| In the Matter of |) | |
| |) | |
| DETROIT MEDICAL CENTER |) | FCC File No. 0002316654 |
| |) | |
| Request for Waiver of Section 90.265(e)(1)(ii) of |) | |
| the Commission's rules |) | |

ORDER

Adopted: March 6, 2007

Released: March 7, 2006

By the Chief, Policy Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. We have before us an application and waiver request filed by the Detroit Medical Center (DMC), Detroit, Michigan.¹ DMC seeks a waiver of Section 90.265 of the Commission's rules to allow operation of radio transmitters at six hospital locations in Detroit, Michigan with a 20 kHz bandwidth ("wideband") emission on frequency 163.250 MHz.² Section 90.265 requires all new stations to operate with a 11.25 kHz ("narrowband") bandwidth emission.³ For the reasons discussed herein, we grant DMC's waiver request.

II. BACKGROUND

2. Frequency 163.250 MHz is available for medical one-way paging communications to mobile receivers, in addition to being allocated for Federal Government use.⁴ In 2005, the Commission amended Section 90.265 to provide that licensees on certain Private Land Mobile Radio (PLMR) channels located in frequency bands allocated primarily for Federal Government use would be required to transition to narrowband (11.25 kHz bandwidth) operations by January 1, 2013, and that no new wideband (20 kHz bandwidth) authorizations would be granted.⁵ Due to the primary status of medical channels (including frequency 163.250 MHz) in the Federal bands, the Commission expects the National Telecommunications and Information Administration (NTIA) to protect existing wideband operations from harmful interference from new or modified Federal operations until the January 1, 2013 narrowband deadline.⁶

¹ See FCC File No. 0002316654, Waiver Request (Waiver Request) (filed Feb. 15, 2006).

² *Waiver Request* at 1.

³ See 47 C.F.R. § 90.265(e)(1)(ii).

⁴ See 47 C.F.R. §§ 90.20(c)(3), (d)(13), 90.265.

⁵ See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for Narrowband Private Land Mobile Radio Channels in the 150.05-150.8 MHz, 162.174 MHz, and 406.1-420 MHz Bands that are Allocated for Federal Government Use, ET Docket No. 04-143, *Report and Order*, 20 FCC Rcd 5793, 5796 ¶ 5 (2005) (*Federal Narrowbanding R&O*).

⁶ *Id.* at 5806 ¶ 32.

3. Up until June 28, 2005, DMC was authorized to operate a wideband medical paging system on this frequency under Call Sign KTO511, Detroit, Michigan. DMC states that due to an administrative oversight, it failed to renew the license,⁷ which expired by its own terms. In the instant proceeding, DMC is applying for a new license in order to resume operations of the medical paging system.⁸ Because no new wideband authorizations are to be granted pursuant to the *Federal Narrowbanding R&O*, DMC requests a waiver of Section 90.265 to permit it to be authorized with a 20 kHz emission. DMC argues that, because the KTO511 system was licensed for nearly twenty years, it should not be considered a new system.⁹

III. DISCUSSION

4. To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest,¹⁰ or the applicant has no reasonable alternative.¹¹ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹²

5. The purpose of Section 90.265(e)(1)(ii) is to promote efficient spectrum use, help accommodate increasing PLMR demand, and maintain compatibility with Federal operations.¹³ As noted above, however, existing wideband operations may continue to operate with 20 kHz bandwidth emissions until January 1, 2013.¹⁴ In this instance, DMC argues that its requested authorization should be treated as an existing wideband operation, given that it had a license for that operation for 20 years, and that license only recently expired.¹⁵ DMC further argues that requiring an immediate transition to narrowband would place an undue financial burden on the hospital system.¹⁶ DMC stresses that the medical paging system is the primary communications source to inform medical staff of life-threatening situations that require the immediate attention of a medical response team.¹⁷ DMC states that it cannot modify its system to operate with an 11.25 kHz emission and thus would have to replace its equipment in order to comply with the narrowband requirement.¹⁸ Finally, DMC states that the signals from its transmitters are contained within

⁷ See Waiver Request at 1.

⁸ *Id.* at 1-2. In addition, on August 2, 2005, DMC received special temporary authorization, call sign WQDD843, to continue to operate the system.

⁹ See Waiver Request at 1.

¹⁰ 47 C.F.R. § 1.925(b)(3)(i).

¹¹ 47 C.F.R. § 1.925(b)(3)(ii).

¹² *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broadcasting Corporation, Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 ¶ 6 (2003).

¹³ *Federal Narrowbanding R&O*, 20 FCC Rcd at 5794-5 ¶¶ 3-4.

¹⁴ *Id.* at 5796 ¶ 5.

¹⁵ *Waiver Request* at 2.

¹⁶ *Id.* at 1.

¹⁷ *Id.*

¹⁸ *Id.*

its facilities, with only a negligible amount of radio frequency radiation detectable outside the buildings.¹⁹ On May 11, 2006, the Wireless Telecommunications Bureau coordinated the subject application with the Interdepartment Radio Advisory Committee (IRAC) of NTIA.²⁰ IRAC raised no interference issues concerning DMC's proposed use of frequency 163.250 MHz with 20 kHz bandwidth.²¹ We conclude, therefore, that application of the rule in this circumstance would not frustrate its underlying purpose. In addition, we conclude that a waiver would be in the public interest, because DMC's current medical paging system is vital to the safety of DMC's patients. Based on the facts before us, we believe that DMC has shown that a waiver is warranted.

IV. CONCLUSION

6. Because we find that DMC has demonstrated that a waiver of Section 90.265(e)(1)(ii) is warranted, we grant the application and waiver request so that DMC may restore operation of its formerly authorized operations with 20 kHz bandwidth. However, we caution DMC that it must achieve narrowband compliance with Section 90.265 on or before January 1, 2013,²² and to ensure that it timely adheres to its license renewal obligations.

V. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, that the Waiver Request filed by the Detroit Medical Center on February 15, 2006 associated with application FCC File No. 0002316654 IS GRANTED, and the application SHALL BE PROCESSED in accordance with this *Order* and the Commission's rules.

8. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Dana Shaffer
Chief, Policy Division
Public Safety and Homeland Security Bureau

¹⁹ *Id.*

²⁰ *See* FCC File No. 0002316654.

²¹ *Id.*

²² *See* 47 C.F.R. § 90.265(e)(1)(iv).